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**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 Debtor.

In re:  
 USA CAPITAL FIRST TRUST DEED FUND,  
 LLC,  
 Debtor.

In re:  
 USA SECURITIES, LLC,  
 Debtor.

Affects:  
☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA First Trust Deed Fund, LLC

Case Nos. BK-S-06-10725 LBR  
 Case Nos. BK-S-06-10726 LBR  
 Case Nos. BK-S-06-10727 LBR  
 Case Nos. BK-S-06-10728 LBR  
 Case Nos. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

**MOTION TO SELL UNDER SECTION  
 363 ALL COMMERCIAL  
 MORTGAGE ASSETS OF DEBTOR  
 USA COMMERCIAL MORTGAGE  
 COMPANY IN THE PLACER  
 VINEYARDS LOANS TO COMPASS  
 USA SPE, LLC [AFFECTS DEBTOR  
 USA COMMERCIAL MORTGAGE  
 COMPANY]**

Date of Hearing: March 15, 2007  
 Time of Hearing: 9:30 a.m.

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Debtor in Possession USA COMMERCIAL MORTGAGE COMPANY ("USACM"), by and through its counsel Lenard E. Schwartzer, Esq. of the Schwartzer & McPherson Law Firm, hereby files its "Motion To Sell Under Section 363 All Commercial Mortgage Assets of Debtor USA Commercial Mortgage Company in the Placer Vineyards Loans to Compass USA SPE, LLC" (the "Motion"), requesting that the Court authorize USACM to do the following:

A. Authorize USACM pursuant to 11 U.S.C. §§ 363(b)(1) and 363(f) to sell to Compass USA SPE, LLC, successor in interest to Compass Partners, LLC ("Compass") the Placer Vineyard Commercial Mortgage Assets (as defined below) of USACM that relate to the Placer Vineyard Loans (as defined below).

This Motion is made and based upon 11 U.S.C. §§ 105, 363(b)(1), and 363(f), the Points and Authorities set forth herein, the Declarations of Thomas J. Allison on file with this Court, and any arguments presented at the hearing on this Motion. Granting this Motion will benefit not only USACM's bankruptcy estate, but also benefit the Direct Lenders for the Placer Vineyard Loans.

## POINTS AND AUTHORITIES

### General Factual Background

1. All five Debtors in the caption above (the "Debtors") filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code on April 13, 2006 (the "Petition Date"). The Debtors continue to operate their businesses and possess their property as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

2. The statutory predicates for the relief requested herein are 11 U.S.C. § 105, 11 U.S.C. § 363(b)(1), and 11 U.S.C. § 363(f).

3. Compass is the Court approved purchaser of certain assets of USACM and Debtor USA Capital First Trust Deed Fund, LLC ("FTDF"), pursuant to the terms of the Compass Asset Purchase Agreement dated December 8, 2006 ("Compass APA"), which was filed with this Court on December 18, 2006 as Docket No. 2164. See, Declaration of Thomas J. Allison in Support of Motion To Sell Under Section 363 All Commercial Mortgage Assets of Debtor USA Commercial Mortgage Company in the Placer Vineyards Loans to Compass USA SPE, LLC being filed contemporaneously herewith ("Allison Declaration") at ¶ 5.

4. The definition of “Commercial Mortgage Assets” under Section 1.1 of the Compass APA specifically excludes “(vi) loans made to Placer Vineyards and Marquis Hotel, which shall not be included on the Serviced Loan Schedule.” See, Allison Declaration at ¶ 6.

5. Pursuant to this definition in the Compass APA, the assets of USACM relating to the two loans serviced by USACM that are owed by Placer County Land Speculators, LLC on the Placer Vineyards Project (the “Placer Vineyards Loans”) were not sold to Compass pursuant to the Compass APA. See, Allison Declaration at ¶ 7.

6. The Placer Vineyards Loans are evidenced by the following:

(A) A Promissory Note dated on or about December 10, 2004, executed by Placer County Land Speculators, LLC, a California limited liability company, in the original principal amount of \$27,500,000 (the “Placer Vineyards Senior Note”). The Placer Vineyards Senior Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing recorded on December 20, 2004, as Document No. 2004-0169766 with the Placer County, California, County Recorder, as subsequently amended. The current principal balance of the Placer Vineyards Senior Note is \$31,500,000. There are currently 343 Direct Lenders for the Placer Vineyards Senior Note. See, Allison Declaration at ¶ 8(A).

(B) A Promissory Note dated on or about December 10, 2004, executed by Placer County Land Speculators, LLC, a California limited liability company, in the original principal amount of \$6,500,000 (the “Placer Vineyards Junior Note”). The Placer Vineyards Junior Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing recorded on December 20, 2004, as Document No. 2004-0169767 with the Placer County, California County Recorder. The current principal balance of the Placer Vineyards Junior Note is \$6,500,000. There are currently 118 Direct Lenders for the Placer Vineyards Junior Note. See, Allison Declaration at ¶ 8(B).

7. After the closing of the sale of assets to Compass pursuant to the Compass APA, Compass has subsequently offered to also purchase from USACM certain rights and assets of USACM relating to the Placer Vineyards Loans (the “Placer Vineyards Commercial Mortgage Assets,” as defined below) from USACM for the purchase price of Three Hundred Thousand

1 Dollars (\$300,000), but only if the sale of the Placer Vineyards Commercial Mortgage Assets to  
 2 Compass can be sold by USACM and can be sold free and clear of all liens, claims, encumbrances  
 3 and interests pursuant to 11 U.S.C. § 363(f). See, Allison Declaration at ¶ 9.

4 8. The term “Placer Vineyards Commercial Mortgage Assets” shall mean the  
 5 following: All servicing rights with respect to the Placer Vineyard Loans, including, without  
 6 limitation, the servicing agreements (the “Servicing Agreements”) relating to the Placer Vineyards  
 7 Loans, any and all Default Rate Interest (as defined in the Compass APA) for the Placer Vineyards  
 8 Loans, any and all Accrued Servicing Fees (as defined in the Compass APA) for the Placer  
 9 Vineyards Loans, any and all Late Charges (as defined in the Compass APA) for the Placer  
 10 Vineyards Loans, any and all Success Fees (as defined in the Compass APA) for the Placer  
 11 Vineyards Loans, and other fees and sums due the loan servicer under the Servicing Agreements,  
 12 as well as all proceeds and receivables related solely to USACM’s participation interest as a Direct  
 13 Lender in the Placer Vineyards Loans (if any), but specifically excluding any other assets not  
 14 specifically identified herein (and without limitation, excluding the excluded types of assets that  
 15 were excluded in subsections (i) through (v) of the definition of “Commercial Mortgage Assets” in  
 16 Section 1.1 of the Compass APA). See, Allison Declaration at ¶ 10.

17 9. USACM seeks an order that the Placer Vineyards Commercial Mortgage Assets  
 18 shall be sold and transferred by USACM to Compass free and clear of all liens, claims,  
 19 encumbrances and interests pursuant to Sections 363(f) and 1146 of the Bankruptcy Code, as  
 20 complemented by Bankruptcy Rule 6004. See, Allison Declaration at ¶ 11. This transfer is  
 21 referred to herein from time to time as the “363 Sale,” which is to be implemented in accordance  
 22 with this Motion.

23 10. Section VIII.D of the Debtors’ Third Amended Joint Chapter 11 Plan of  
 24 Reorganization (the “Confirmed Plan”) provides that the Bankruptcy Court shall retain exclusive  
 25 jurisdiction over all matters arising out of and related to the Chapter 11 Cases of the Debtors and  
 26 the assets and liabilities of the Estates of the Debtors. USACM also seeks as part of the order  
 27 approving this Motion a ruling that the Bankruptcy Court, in accordance with Section VIII.D of  
 28 the Confirmed Plan, retains exclusive jurisdiction over all matters arising out of and related to the

1 sale of the Placer Vineyards Commercial Mortgage Assets to Compass, including, but not limited  
 2 to hearing and determining all matters related to the transfer of the Placer Vineyards Commercial  
 3 Mortgage Assets to Compass. See, Allison Declaration at ¶ 12.

4 11. USACM also seeks as part of the order approving this Motion a ruling that  
 5 Compass is a good faith purchaser of the Placer Vineyards Commercial Mortgage Assets as  
 6 contemplated by 11 U.S.C. § 363(m). See, Allison Declaration at ¶ 13.

#### 7 Statement of the Law

8 12. USACM was previously engaged in the business of servicing fractional interests in  
 9 various commercial loans. As mandated by the Confirmed Plan, USACM is currently liquidating  
 10 all of its assets and/or transferring them to the USACM Trust. See, Allison Declaration at ¶ 14.

11 13. The paramount goal in any proposed sale of property of the estate is to maximize  
 12 the proceeds received by the estate. See *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn*  
 13 *Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) ("a primary objective of the Code [is] to  
 14 enhance the value of the estate at hand"); *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 131  
 15 (Bankr. N.D. Ga. 1988).

16 14. Section 105(a) of the Bankruptcy Code allows this Court to "issue any order,  
 17 process, or judgment that is necessary or appropriate to carry out the provisions of [the  
 18 Bankruptcy Code]." 11 U.S.C. § 105(a). Under Section 105(a) of the Bankruptcy Code, the Court  
 19 has expansive equitable powers to fashion any order or decree that is the interest of preserving or  
 20 protecting the value of the debtor's assets. *See, Chinician v. Campolongo (In re Chinichian)*, 784  
 21 F.2d 1440, 1443 (9<sup>th</sup> Cir. 1986) ("Section 105 sets out the power of the bankruptcy court to  
 22 fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.")

23 15. Section 363(f) of the Bankruptcy Code provides that USACM may sell property of  
 24 the USACM estate, out of the ordinary course of business pursuant to Section 363(b) of the  
 25 Bankruptcy Code, free and clear of any interest in such property of any entity other than USACM,  
 26 if: "(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;  
 27 (2) such entity consents; (3) such interest is a lien and the price at which such property is to be  
 28 sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona

1 fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a  
 2 money satisfaction of such interest.”

3 16. USACM is not aware of any other entity that claims an interest in the Placer  
 4 Vineyards Commercial Mortgage Assets. Therefore, USACM qualifies for a 363 Sale Order  
 5 under the terms of Section 363(f) to sell the Placer Vineyards Commercial Mortgage Assets under  
 6 Section 363(b). See, Allison Declaration at ¶ 15.

7 17. Section 363(b)(1) provides that a debtor in possession, “after notice and a hearing,  
 8 may use, sell, or lease, other than in the ordinary course of business, property of the estate.”  
 9 “Section 363 of the [Bankruptcy] Code seems on its face to confer upon the bankruptcy judge  
 10 virtually unfettered discretion to authorize the use, sale or lease, other than in the ordinary course  
 11 of business, of property of the estate.” *Committee of Equity Sec. Holders v. Lionel Corp. (In re*  
 12 *Lionel Corp.)*, 722 F.2d 1063, 1069 (2<sup>nd</sup> Cir. 1983).

13 18. To approve the use, sale or lease of property other than in the ordinary course of  
 14 business, there must be “a sound business purpose [that] justifies such actions.” *In re Montgomery*  
 15 *Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999).

16 19. USACM has reviewed Compass’s offer to purchase the Placer Vineyards  
 17 Commercial Mortgage Assets for \$300,000. As a result of USACM’s negotiations with Compass,  
 18 it is USACM’s business judgment that the purchase price offered to USACM by Compass for the  
 19 Placer Vineyards Commercial Mortgage Assets represents the highest and best offer that could be  
 20 negotiated for the Placer Vineyards Commercial Mortgage Assets at this time. Accordingly, it is  
 21 USACM’s business judgment that the sale to Compass will maximize the return to the USACM  
 22 estate from the sale of the Placer Vineyards Commercial Mortgage Assets, and that it would be  
 23 beneficial to the USACM estate (and ultimately to the USACM Trust that is be formed and funded  
 24 pursuant to the Confirmed Plan, which is to receive any cash proceeds from the sale of the Placer  
 25 Vineyards Commercial Mortgage Assets) if USACM accepted the Compass offer to purchase the  
 26 Placer Vineyards Commercial Mortgage Assets. See, Allison Declaration at ¶ 16.

27 20. The sale of the Placer Vineyards Commercial Mortgage Assets to Compass is  
 28 subject to higher and better offers for the Placer Vineyards Commercial Mortgage Assets. Any



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such higher and better offers for the Placer Vineyards Commercial Mortgage Assets must be in writing and must be received by the undersigned attorneys for USACM at least two (2) business days prior to the hearing before the Bankruptcy Court on this Motion. Any exceptions to this deadline must be approved by the Bankruptcy Court. If other written offers are submitted for the Placer Vineyards Commercial Mortgage Assets, the Bankruptcy Court will determine which offer is the highest and best offer for the Placer Vineyards Commercial Mortgage Assets, and if necessary, USACM will request that the Bankruptcy Court conduct an auction for the Placer Vineyards Commercial Mortgage Assets. See, Allison Declaration at ¶ 17.

21. USACM has been advised that additional significant funding is needed to complete the Placer Vineyards Project and maximize the value that should be realized from the successful completion of the Placer Vineyards Project. USACM and the USACM Trust will not be able under the terms of the Confirmed Plan to provide any additional funding for the Placer Vineyards Project. Compass has indicated that it has the resources and the incentive to provide the requested additional funding for the Placer Vineyards Project if it purchases the Placer Vineyards Commercial Mortgage Assets. See, Allison Declaration at ¶ 18.

22. Compass is not a creditor or interested party in USACM's bankruptcy case (other than by virtue of its purchase of other assets of USACM pursuant to the Compass APA), and Compass therefore qualifies as a good faith purchaser as contemplated by 11 U.S.C. § 363(m). See, Allison Declaration at ¶ 19.

23. Notice of this Motion will be served upon all of the current Direct Lenders for the Placer Vineyards Loans, in addition to the other parties that regularly receive notices of pleadings filed in these bankruptcy cases. The interests of the current Direct Lenders in the Placer Vineyards Loans (other than any interest of USACM as a Direct Lender in the Placer Vineyards Loans, if any) are not being sold to Compass pursuant to this Motion. See, Allison Declaration at ¶ 20.

### **CONCLUSION**

Debtor USACM requests that the Motion be granted, and that the Court: (a) authorize USACM pursuant to 11 U.S.C. §§ 363(b)(1) and 363(f) to sell to Compass the Placer Vineyard

Commercial Mortgage Assets, free and clear of all liens, claims, encumbrances and interests pursuant to 11 U.S.C. § 363(f), for the purchase price of \$300,000, and (b) authorize USACM to execute all documents and take all other necessary steps required to implement any of the foregoing actions.

DATED: March 8, 2007.

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